

A decision finding that the claimant was an independent contractor of the respondent and not an employee is subject to review by the Appeals Board as it raises a

jurisdictional issue as to whether claimant's accidental injury arose out of and in the course of his employment with the respondent. See K.S.A. 44-534a(a)(2).

(1) The Administrative Law Judge found that the claimant had failed to establish that it is more probably true than not that an employee/employer relationship existed on the date of the alleged accident. In determining whether an employee/employer relationship exists or a person is an independent contractor, the most significant factor to consider is an employer's right to direct and control the method and manner of doing the work. In fact, the right to control is more important than the actual exercise of control. Although the right to control is the most significant factor, other considerations indicative of an employee/employer relationship are the employer's right to discharge, payment made by the hour rather than by the job, and furnishing of equipment. See Jones v. City of Dodge City, 194 Kan. 777, 402 P.2d 108 (1965).

The Appeals Board finds, after a complete review of the preliminary hearing evidentiary record, that the claimant has failed to establish that on October 24, 1994, the date of claimant's alleged accident, an employee/employer relationship existed between him and the respondent. The preliminary hearing testimony of Johnny Pollock, foreman for the respondent, established that claimant was hired as an independent contractor. Claimant had his own crew and paid his own crew from the single check made out to the claimant by the respondent after the completion of a particular job. No taxes were deducted from the check, respondent had no control over the hours claimant and his crew worked, and deductions were made for use of respondent's equipment from the pay claimant received for each job completed. Respondent did have employees who coordinated with the claimant on completion of each job but their responsibility was only to make sure materials were on the job and to inspect the job after completion. These employees did not have control over the claimant and his crew in reference to how the work was done and who actually performed the work.

Accordingly, the Appeals Board finds that on the alleged date of accident, October 24, 1994, claimant was working for the respondent as an independent contractor and not as an employee and therefore coverage under the Kansas Workers Compensation Act is denied. See McCarty v Great Bend Board of Education, 195 Kan. 310, 403 P.2d 956 (1965).

(2) Having found that an employee/employer relationship did not exist between the claimant and the respondent, all other issues are rendered moot.

**WHEREFORE**, it is the finding, decision and order of Appeals Board that the Preliminary Hearing Order of Administrative Law Judge Nelsonna Potts Barnes, dated March 17, 1995, should be, and is hereby, affirmed in all respects.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of August, 1995.

---

BOARD MEMBER

---

BOARD MEMBER

---

BOARD MEMBER

c: Michael Golden, Pro Se  
Paul D. Hogan, Wichita, Kansas  
M. Doug Bell, Coffeyville, Kansas  
Nelsonna Potts Barnes, Administrative Law Judge  
Philip S. Harness, Director